

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS
ICE HEALTH SERVICE CORPS

GRIEVANCE SYSTEM (MEDICAL)

IHSC Directive: 01-05
ERO Directive Number: 11704.2
Federal Enterprise Architecture Number: 306-112-002b
Effective: 07 Jan 2014
Reviewed 5 Feb 2015
Annual Review: 21 Mar 2016 No Changes

By Order of the Acting Assistant Director
Stewart D. Smith, DHSc/s/

1. **PURPOSE:** The purpose of this issuance is to set forth policies and procedures for investigating and addressing medical complaints and grievances submitted by detainees.
2. **APPLICABILITY:** This directive applies to all Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC) federal staff working in IHSC-staffed facilities, IHSC Headquarters (HQ) and Medical Case Management staff. This directive applies to contract personnel when supporting IHSC-staffed facilities. Federal contractors are responsible for the management and discipline of its employees supporting IHSC. IHSC-staffed facilities must implement a Grievance System as described in the 2011 ICE Performance Based National Detention Standards (PBNDS) section 6.2 *Grievance System* standard and the supplemental guidance included in this directive.
3. **AUTHORITIES AND REFERENCES:**
 - 3-1. Section 322 of the Public Health Service Act ([42 USC § 249\(a\)](#)). Medical Care and Treatment of Quarantined and Detained Persons.
 - 3-2. Section 232 of the Immigration and Nationality Act, as amended ([8 USC § 1222](#)). Detention of aliens for physical and mental examination.
 - 3-3. [8 CFR § 232](#). Detention of Aliens for Physical and Mental Examination.
 - 3-4. [42 CFR § 34](#). Public Health, Medical Examination of Aliens.
 - 3-5. 2011 ICE Performance Based National Detention Standards, [6.2 Grievance System](#).

- 4. POLICY:** All IHSC-staffed facilities must implement a grievance system that provides detainees with a procedure to file informal, formal, and emergency grievances related to medical care, and provides for timely responses.

4-1. Health Services Administrator (HSA). The HSA is responsible for:

- a. Medical Grievance Officer: Designating a Federal employee to serve as the IHSC facility's Medical Grievance Officer. The Assistant HSA (AHSA) should be the primary choice. The Nurse Manager (NM) should be the secondary choice
- b. Appeal: Designating a federal employee as the first line of appeal. If the complaint is medical care, the Clinical Director is the preferred designee. If the complaint is administrative in nature, the HSA is the preferred designee.
- c. Log: Ensuring a Grievance Log is maintained and updated in a timely manner each time.
- d. Documentation: Ensuring that the circumstances and resolution of all complaints and grievances and outcomes are documented in the health record, the grievance log, and forwarded to the facility's Grievance Officer (GO).
- e. Training: Ensuring all IHSC staff receive training upon entry into employment and annually thereafter on the grievance process.
- f. Closing the Loop:
 - (1) The CD/HSA must review the grievance resolution.
 - (2) The CD/HSA should discuss issues brought up through the grievance process at the monthly staff meeting.

4-2. Medical Grievance Officer (MGO). The MGO:

- a. Coordinates and acts as a liaison between the detention facility GO and the IHSC-staffed facility to ensure that medical grievances are processed, investigated and responded to within the established timeframes and in accordance with the applicable local ICE, ERO, detention facility, and IHSC policies and procedures.
- b. Serves as the primary IHSC staff member responsible for conducting the initial adjudication of a formal or emergency grievance.
- c. Consults with the HSA to assign the processing, investigating, and/or

responding to a grievance to an appropriate federal IHSC staff member, when indicated (e.g. when it is a conflict of interest for the MGO to perform these duties, or other issues prevent the MGO from performing these duties).

- d. Maintains the IHSC grievance log.
- e. Informs the facility GO of all informal, emergency, and formal grievances submitted directly to the medical clinic.

4-3. IHSC Staff. The IHSC staff member assigned to investigate a grievance is responsible for documenting the medical grievance and outcome in the detainee's health record and forwarding the pertinent information to the MGO.

4-4. Types of Medical Grievances. IHSC staff must inform the MGO of all informal, emergency, and formal grievances submitted directly to the staff member. IHSC staff members will make every effort to attempt to resolve all informal grievances.

- a. **Informal Grievances.** Informal grievances are grievances that IHSC staff resolve orally and informally in their daily interaction with detainees. (See PBNDS 2011, Section 6.2 *Grievance System*, Subsection V.C.1. *Informal Grievances* for more information.
 - (1) Staff members who receive a detainee's informal complaint or grievance shall attempt to resolve the issue informally, if the issue is within his/her scope of responsibility, or notify the facility MGO or designee of the grievance as soon as practical.
 - (2) Detainees may bypass or terminate the informal grievance process at any point and proceed directly to the formal grievance.
 - (3) If the informal grievance is resolved, IHSC staff need not provide the detainee written confirmation of the outcome.
 - (4) The IHSC staff member that resolved the issue shall document the circumstances and resolution in the detainee's health record and forward a synopsis of the grievance and outcome to the MGO. The synopsis includes:

Date grievance received

Date of response

Grievance summary (1-3 sentences).

Decision and rationale for decision

Outcome: Detainee's acceptance/rejection of decision

Following steps: actions that either staff will take or detainee will take. For example, "schedule a follow-up appointment" or, "file an appeal."

- (5) The MGO delivers the summary to the designated GO for entry in the detainee's Detention File. The MGO also enters the Grievance information and delivery of the summary (to the GO) in the IHSC Grievance log.

- b. **Emergency Grievances:** Emergency grievances are grievances that are time-sensitive and involve an immediate threat to health, safety, or welfare. (See PBNDS 2011, Section 6.2 *Grievance System*, Subsection V.C.2. *Emergency Grievances* for more information).

- (1) If a detainee has an emergency medical grievance that appears to involve an immediate threat to health, safety, or welfare, detention, or IHSC health, the staff member that receives the grievance must immediately bring this to the attention of the MGO, HSA or CD for their review.
- (2) If the MGO, HSA, or CD is not present, staff alerts the senior clinical person on duty.
- (3) If the MGO or HSA are not clinicians they may refer the emergency medical grievance to the CD, physician, or senior clinical person on duty.

If the CD, physician, or senior clinical person on duty determines that the grievance does not involve an immediate threat to health, safety, or welfare, non-emergency standard grievance procedures will apply.

- c. **Formal Grievances:** Formal grievances are detainee grievances filed in accordance with established procedures and responded to in writing. There are levels of formal grievance review at every facility: GO review; Grievance Appeals Board (GAB), and appellate review. (See PBNDS 2011, Section 6.2 *Grievance System*, Subsection V.C.3. *Formal Written Grievances* for more information).

- (1) Right to File Formal Written Grievance. The detainee may file a formal written grievance at any time during, after, or in lieu of, lodging an informal oral grievance.

- (2) Direct Submission to the IHSC Medical Clinic. Detainees may submit formal written grievances regarding medical care directly to any IHSC staff member.
- (3) Sealed Grievance. A detainee has the right to seal the grievance in an envelope, clearly marked "Medically Sensitive." Each grievance form submitted in a sealed envelope is to be delivered to the MGO without being opened, read, altered, or delayed.
- (4) Receipt of Formal Written Grievance. Medical formal grievances will be either received by the GO and forwarded to the MGO or received directly by the MGO or designee. Upon receipt of the formal grievance, the MGO or designee logs the grievance in the Grievance log within 24 hours or the next business day.
- (5) Responses to Formal Written Medical Grievances. The MGO accepts the locally-approved grievance form signed and dated by the detainee (except for sealed grievances) and arranges a meeting with the detainee to attempt to resolve the issue.
- (6) If the grievance involves the MGO, the MGO will forward the grievance to the HSA who will designate another federal employee to address the grievance.
- (7) The MGO conducts the initial adjudication of the grievance and provides the detainee with a written decision, including the rationale for the decision, within five working days of receipt of the written grievance. The health staff 's written decision addressing the following will be documented on the grievance form that was submitted by the detainee. At a minimum the following will be addressed:
 - Date of decision.
 - Decision and rationale for decision.
 - Outcome: Detainee's acceptance/rejection of decision.
 - Following steps: actions that either staff will take or detainee will take. For example, "schedule a follow-up appointment" or, "File an appeal."

4-4. Medical Record Documentation.

- a. The MGO or designee assigned to resolve the grievance ensures a copy of the written medical grievance and related documents are scanned in the detainee's health record.
- b. The MGO or designee will document the grievance via an "Admin" encounter in the electronic medical record. At a minimum, the

documentation will include:

- (1) Date Grievance filed (received).
 - (2) Nature of the grievance.
 - (3) Background and /or investigation results.
 - (4) Decision and rationale.
 - (5) Date decision provided to detainee.
 - (6) Outcome (detainee's acceptance/rejection; appeal).
 - (7) Following steps.
 - (8) Verification that grievance was forwarded to facility GO.
- c. Disposition of the original grievance form and related documents follows all IHSC Health Information Management Guidelines.

4-5. Grievance Log Documentation.

- a. Each IHSC clinic maintains a detainee grievance log (password protected Excel spreadsheet) that is subject to regular inspection by the HSA and designated IHSC Headquarters (HQ) staff with a need to know. It is the responsibility of the MGO to ensure that the grievance logs are maintained. The detainee grievance log contains the following categories:
- (1) Date grievance filed (date received by the facility or medical grievance officer).
 - (2) Grievance log number (if formal must match grievance number on the form).
 - (3) Type of grievance (informal, formal, or emergency).
 - (4) Classification (medical, dental, mental health, other).
 - (5) Name of detainee who filed the grievance.
 - (6) Alien File Number of detainee who filed the grievance.
 - (7) Nature of the grievance (one sentence).
 - (8) Date decision provided to detainee.

- (9) MGO or Medical Staff member who adjudicated the grievance (Rank, First & Last Name, Discipline, Position). Ex. LCDR Tom Cruz, RN, Nurse Manager.
 - (10) Appeal date (if applicable).
 - (11) Outcome of the adjudication (nuisance, petty, resolved, rejected).
 - (12) Date a copy of the grievance was delivered to the detention facility GO.
 - (13) Name of the facility GO
- b. The MGO coordinates with the facility GO to assign each grievance a log number, enters it in the space provided on the detainee grievance form, and records it in the detainee grievance log in chronological order, according to the following stipulation: the log entry number and the detainee grievance number must match.

4-6. Unresolved Grievances. If the grievance cannot be resolved at the first level to the satisfaction of the detainee, they have the right to appeal the decision.

- a. If the detainee is not satisfied with the decision from the first level, the detainee will be informed that he/she has the right to appeal to the next level. If the grievance is related to medical care, the appeal will be forwarded to the CD or federal physician to address. If the grievance is administrative in nature, the HSA will address the appeal.
- b. If the detainee is not satisfied with the decision from the second level, the detainee will be informed that he/she has the right to appeal to the GAB. IHSC health staff or facility staff may assist the detainee in writing this request for an appeal.
- c. Grievance Appeals Board (GAB). If the grievance is not resolved at the first appeals level, the HSA refers the grievance to the ICE administrator to coordinate a GAB. The GAB must include at least one IHSC Health Services federal staff member as part of a review of a medical grievance.
 - (1) The GAB reviews the appeal and provides a written decision on the grievance within five working days of the receipt of the appeal.
 - (2) The GAB may not include any individuals included in the grievance or who responded to the initial grievance or first appeal.
 - (3) If the outcome of the appeal is unfavorable to the detainee, the GAB

forwards the grievance and all supporting documentation to the facility administrator within 24 hours of issuing a decision.

- (4) IHSC Health Services staff or other GAB staff notifies the detainee of his/her right to file an appeal of the GAB's decision with the Field Office Director (FOD) or/ Assistant Field Office Director ((AFOD).
- (5) The AHA or designee documents in the detainee's medical record the outcome of the GAB.
- d. Appellate Review. IHSC Health Services staff or other GAB staff notifies the detainee of his or her right to file an appeal of the GAB's decision with the FOD/AFOD. (See PBNDS 2011 6.2 *Grievance System* and ICE policy for information on facility administrator and FOD requirements).

4-7. Continuous Quality Review of the Medical Grievance Process. As part of the Performance Improvement program at each IHSC facility, the medical grievance process is reviewed and corrective action plans are developed as needed.

4-8. Detainee Abuse of Grievance System. See PBNDS 2011 [6.2 Grievance System](#) section V.E. and local ICE policies for information on responding to detainees with an established pattern of filing nuisance complaints.

4-9. Allegations of Staff Misconduct or Retaliation. See PBNDS 2011 [6.2 Grievance System](#) sections V.F&G' and ICE Policy. Upon receipt, facility staff must forward all detainee grievances containing allegations of staff misconduct to a supervisor or higher-level official in his/her chain of command.

5. PROCEDURES: There are no additional procedures.

6. HISTORICAL NOTES: This is an annual review with no changes.

7. DEFINITIONS: See definitions for this policy at [IHSC Glossary](#).

8. APPLICABLE STANDARDS:

8-1. Performance Based National Detention Standards (PBNDS):

- a. PBNDS 2011: 6.2 *Grievance System*

8-2. American Correctional Association (ACA):

- a. 1-HC-3A-01: *Grievances*
- b. 1-HC-4A-03: *Internal Review and Quality Assurance*

- c. 4-ALDF-4C-01: *Access to Care*
- d. 4-ALDF-6B-01: *Grievance Procedure*
- e. 4-4394: *Grievances*

8-3. National Commission on Correctional Health Care (NCCHC): Standards for Jails, 2014: J-A-11: *Grievance Mechanism for Health Complaints*

- 9. RECORDKEEPING.** IHSC maintains detainee health records as provided in the Alien Medical Records System of Records Notice, 74 Fed. Reg. 57688 (Nov. 9, 2009). ICE ERO maintains records pertaining to arrests, detentions and removals as provided in the Immigration and Enforcement Operational Records (ENFORCE) System of Records Notice, 75 Fed Reg. 23274 (May 3, 2010). IHSC health services staff logs grievances by fiscal year and maintains them for six years after the fiscal year has ended.

Protection of Medical Records and Sensitive Personally Identifiable Information.

- 9-1.** Staff keeps all medical records, whether electronic or paper, secure with access limited only to those with a need to know. Staff locks paper records in a secure cabinet or room when not in use or not otherwise under the control of a person with a need to know.
- 9-2.** Staff is trained at orientation and annually on the protection of a patient's medical information and Sensitive PII.
- 9-3.** Only authorized individuals with a need to know are permitted to access medical records and Sensitive PII.
- 9-4.** Staff references the Department of Homeland Security *Handbook for Safeguarding Sensitive PII* (Handbook) at: (b)(7)(E) when additional information is needed concerning safeguard sensitive PII.

- 10. NO PRIVATE RIGHT STATEMENT:** This document is an internal policy statement of ICE. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.